



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DOROTEO POLANCO,	:	
	:	
Plaintiff,	:	11 Civ. 3024 (DAB) (HBP)
	:	
-against-	:	AMENDED REPORT
	:	<u>AND RECOMMENDATION</u> <sup>1</sup>
TIANO'S CONSTRUCTION CORP.,	:	
<u>et al.</u> ,	:	
	:	
Defendants.	:	
	:	

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PITMAN, United States Magistrate Judge:

TO THE HONORABLE DEBORAH A. BATTS, United States  
District Judge,

Plaintiff commenced this action on April 28, 2011 by filing a Summons and Complaint. On February 6, 2013, I issued a Report and Recommendation in which I construed the motion to dismiss filed by Defendants Tiano's Construction Corp. ("Tiano") and Mitrani Plasterers Co. Inc. ("Mitrani") as a motion for summary judgment and recommended that the motion be granted. Your Honor adopted my February 6, 2013 Report and Recommendation

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<sup>1</sup>The Report and Recommendation issued in this matter on March 25, 2014 inadvertently provided the wrong deadline for the filing of objections. This Report and Recommendation corrects that error. In all other respects, it is identical to the Report and Recommendation issued on March 25, 2014.

on March 18, 2013 and dismissed both Tiano and Mitrani from the action, leaving defendant Tiano's Construction Mitrani Ceasare General Partnership ("Tiano II") as the sole remaining defendant in this action. Although the docket sheet indicates Tiano II has been served (Docket Item 27), Tiano II has never appeared, answered or moved with respect to the complaint.

Because Tiano II appeared to possess the same dispositive defenses that Tiano and Mitrani possessed and because there have been no activity in the case for a year, I issued an Order on February 4, 2014, that provided if Tiano II wished to assert the same defenses Tiano and Mitrani had previously asserted, it was to serve and file a motion for summary judgment by February 21, 2014 and that if it failed to make such a motion by that date, I would consider the defenses waived. My February 4, 2014 Order further provided that, if Tiano II did not file a dispositive motion by February 21, plaintiff was to move for a default judgment by February 28, 2014 and that if plaintiff failed to do so I would issue a report and recommendation recommending the dismissal of the action for failure to prosecute.

To date, neither plaintiff nor Tiano II have taken any action in connection with this matter.

Accordingly, in light of the fact that plaintiff has taken no action in this matter for more than a year and has been

expressly advised that a failure to take action by February 28, 2014 would result in a report and recommendation recommending the dismissal of the action, I respectfully recommend mea sponte that the action be dismissed for failure to prosecute pursuant to Fed.R.Civ.P. 41(b).

### **OBJECTIONS**

Pursuant to 28 U.S.C. § 636(b)(1)(C) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from the date of this Report and Recommendation to file written objections. See also Fed. R. Civ. P. 6(a) and 6(e). Such objections (and responses thereto) shall be filed with the Clerk of the Court, with courtesy copies delivered to the chambers of the Honorable Deborah A. Batts, United States District Judge, Room 2510, 500 Pearl Street, New York, New York 10007 and to the chambers of the undersigned, Room 750, 500 Pearl Street, New York, New York 10007. Any requests for an extension of time for filing objections must be directed to Judge Batts. FAILURE TO OBJECT WITHIN FOURTEEN (14) DAYS **WILL** RESULT IN A WAIVER OF OBJECTIONS AND **WILL** PRECLUDE APPELLATE REVIEW. Thomas v. Arn, 474 U.S. 140 (1985); United States v. Male Juvenile, 121 F.3d 34, 38 (2d Cir. 1997); I.U.E. AFL-CIO Pension Fund v. Hermann, 9 F.3d 1049, 1054 (2d Cir. 1993); Frank v. Johnson, 968

F.2d 298, 300 (2d Cir. 1992); Wesolek v. Canadair Ltd., 838 F.2d 55, 58 (2d Cir. 1988); McCarthy v. Manson, 714 F.2d 234, 237-38 & n.2 (2d Cir. 1983).

Dated: New York, New York  
March 26, 2014

Respectfully submitted,

  
HENRY PITMAN  
United States Magistrate Judge

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